

Governmental units incur Retailers' Occupation Tax liability when selling tangible personal property to the public for use or consumption. The only exception is the sale of an item of tangible personal property by a governmental unit in the performance of its governmental function. See 86 Ill. Adm. Code 130.2055. (This is a GIL).

July 26, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated June 22, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Please have a tax representative review this inquiry and provide me with your agency's interpretation.

Your immediate response will be most appreciated. Thank you.

#### **QUESTIONS**

1. If a city governmental entity sales tangible personal property and/or provides a taxable service, is the city governmental entity responsible for the collection and remittance of state sales tax?

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See the enclosed copy of 86 Ill. Adm. Code 130.101. Since August 1, 1961, governmental units incur Retailers' Occupation Tax liability when selling tangible personal property to the public for use or consumption. The only exception is the sale of an item of tangible personal property by a governmental unit in the performance of its governmental function. See the enclosed copy of 86 Ill. Adm. Code 130.2055. For example, sales of license plates by the Secretary of State are nontaxable sales made in the direct performance of a governmental function. The reasoning behind this is to make sales by governmental units taxable that are not in the direct performance of their governmental function to ensure that governmental units do not have a competitive advantage when selling items which are also sold by Illinois retailers.

2. If a county governmental agency sales tangible personal property and/or provides a taxable service, is the county governmental entity responsible for the collection and remittance of state sales tax?

July 26, 1999

See the answer to question number 1 above.

3. My understanding is that your state can not require the federal government to collect and remit your state's sales tax. However, if a federal governmental agency sales tangible personal property and/or provides a taxable service is the purchaser responsible for reporting state use tax?

Section 2-60 of the Retailers' Occupation Tax Act provides that no tax is imposed under that Act "on the privilege of engaging in a business in interstate commerce or otherwise, when the business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State." 35 ILCS 120/3-60 (1996 State Bar Edition). Section 3-65 of the Use Tax Act also provides that if the seller would not be taxable under the Retailers' Occupation Tax Act, despite all elements of the sale occurring in Illinois, then the tax imposed by the Use Tax Act does not apply. 35 ILCS 105/3-65 (1996 State Bar Edition). The Department believes that the Supremacy clause of the United States Constitution prohibits the State of Illinois from imposing Retailers' Occupation Tax on sales of tangible personal property by the Federal Government. Purchasers of tangible personal property from the Federal Government do not incur Use Tax liability on those purchases under the authority of Section 3-65 of the Use Tax Act.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.